IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 806 of 2007.

Judgment reserved on : 3.9.2007

Date of Decision: September_10, 2007

Sandeep Chaudhary & ors. …Petitioners

Versus.

H.P. University & ors. …Respondents.

Coram

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice V.K.Ahuja, J.

Whether approved for reporting?

For the Petitioner(s) : Mr. Sanjiv Bhushan, Advocate.

For the Respondent(s): Mr. V.D.Khidta, Advocate.

Deepak Gupta, J.

This writ petition has been filed by eight students who are pursuing their B.Ed courses in the Department of Education in the HP University. They have not been issued roll numbers and have not been permitted to appear in the final examination on account of shortage of lecturers. They by means of this writ petition have prayed that they may be permitted to take examination of B.Ed courses along with supplementary examination to be held in September, 2006 in the interest of law and justice.

The brief facts of the case are that the respondent- University invited applications to the B.Ed courses in non-medical/medical and Art streams. The admission was made on the basis of an entrance test. Prospectus was issued which contained the annual calendar and indicated that there would be 153 (including holidays) teaching days from 1.8.2006 to 31.12.2006. The teaching

was to continue from 21.2.2007 to 31.3.2007, that is, 39 days more (including holidays). The case of the petitioners is that in fact classes were started in last week of August and no classes were held after the first week of December. According to the petitioner only 15 to 20 lectures were delivered after the winter vacation. The petitioners also relied upon the norms laid down by NCTE which clearly lay down that there should be at least 150 teaching days in a calendar year exclusive of period of admission examination etc. It is also alleged that whereas other students who are similarly situate have been granted roll numbers and have been permitted to take supplementary examination but the same opportunity has been denied to the petitioners. The stand of the University is that the relaxation has been made strictly in accordance with the ordinances and there is no discrimination.

In rejoinder filed by the petitioners, the allegations of the petitioners are that they have been discriminated against as proved by the fact that one student, namely, Duni Chand who had attended only 147 lectures out of 361 lectures, i.e. 42.11% in B.Ed (Non-medical) has been granted admission whereas two of the petitioners, namely, Vijay Kumar petitioner No.2 and Tripti Chand petitioner No.3 who had attended 145 and 141 lectures, respectively, out of the total number of 332 lectures held in B.Ed (Medical) i.e. 43.67% and 42.47% have been denied admission. We had, therefore, called for the record of the University and have perused the relevant ordinances.

Ordinance 6.2 of the university provides that for a student to be eligible to appear as a candidate in the examination, he should

have at least 75% attendance in the concerned course(s). However, the second proviso to Ordinance 6.2(b) empowers the Principal/Dean of Faculty/Chairman of the Department concerned to condone 10% absence in lectures for reasons to be recorded in writing.

Ordinance 6.5 provides that the absence from lectures, tutorials, seminars, practical on account of participation by the student in the specified cultural and other sports activities as well as NCC and NSS camps including the time spent on journey shall be treated to be attendance. However, absence on these counts should not be more than 20% of the lectures delivered.

Ordinance 6.6 empowers the Pro-vice Chancellor/Vice-Chancellor of the university to condone further shortage of 5% lectures. It would be pertinent to mention that the Ordinances 6.2 and 6.4 do not apply to the law courses.

From the reading of the aforesaid ordinances, it is clear that the Chairman of the Department/ Dean of Faculty can condone 10% lectures. Maximum of 20% lectures can be counted as attendance on account of journey time and the other absence from lectures on account of sports/cultural activities and 5% can be condoned by the Vice Chancellor / Pro-vice Chancellor. Thus the total condonation of lectures which can be done under the various ordinances of the University is only 35%.

We have perused the record and we have seen that Duni Chand who had attended only 147 lectures out of 361 lectures for B.Ed non-medical course has been granted admission by the University, whereas petitioner No.2 and petitioner No.3 who have

attended 42.67% and 43.47% of the lectures delivered in B.Ed Medical, have not been issued roll numbers to appear in the examination. There seems to be discrepancy.

Shri V.D.Khidta, learned counsel for the University when faced with this situation, produced before us the record in which the Dean of Students Welfare has issued a certificate in favour of Duni Chand that he had participated in SCA cultural function held on 12th and 13th October, 2006. Below that, there is a hand written note that 20 days consumed for rehearsal and SCA function. On the basis of these recommendations condonation of 20% lectures have been made and after giving Duni Chand the benefit of condonation of 10% lectures by the Chairman of the Department and 5% by the Vice Chancellor, roll number has been issued to him.

We fail to understand how the case of petitioners No. 2 and 3 is any different. Even with regard to petitioners No. 2 & 3, it has been clearly stated that they have taken part in the SCA function. They have taken part in a play whereas Duni Chand taken part in the Chambyali Natti. If Duni Chand has given the benefit of shortage of lectures, we fail to understand why this benefit was not given to the petitioners 2 & 3. This action on the part of respondent-University in giving benefit on the policy of pick and choose is totally arbitrary and illegal.

As far as the other contentions of Shri Sanjiv Bhushan learned counsel for the petitioners are concerned, we are of the considered view that no student has a right to claim that he or she shall not attend the classes and must be permitted to appear in the examination. We find from the material on record that a total

number of 361 lectures were conducted in non-medical B. Ed course, 332 lectures in medical B.Ed course and 361 B.Ed Arts. If the students take part in the cultural activities and absent themselves from the lectures of the university they cannot be granted the benefit of condonation of lectures more than that provided under the ordinances of the University. The maximum condonation which is permitted under the ordinances is only 35%. Therefore, any student who has attended less than 40% lectures cannot be permitted to appear in the examination.

Before parting with this case, we direct the University to ensure that in future , the ordinances of the university are strictly complied with. We have found that condonation of 20% under Ordinance 6.5 is being done in an absolutely perfunctory and mechanical manner. It is apparent that no record of the attendance of the students in the functions, sports meets, days of the travel is kept. The University shall ensure that proper records are maintained with regard to the students who attend and take part in the cultural activities as contemplated in Ordinance 6.5. Even in respect of Ordinances 6.2 and 6.6 the appropriate authorities under both these ordinances are required to pass a reasoned and speaking order for condoning the delay. The delay cannot be condoned merely on the asking.

We had directed the Dean, Students Welfare to appear in person has admitted before us that certificates are issued recommending condonation of lectures in a mechanical manner. This is done without verifying the facts. In fact, the photo copy of the certificate in respect of Duni Chand as annexed with the

petitioner's rejoinder is different from the certificate on the records of the university. We do not expect the authorities at the level of Dean, Students Welfare to make interpolations in the certificate(s) after they have been issued. In future, while issuing the certificate, it shall be ensured that guidelines as contemplated in the ordinances are strictly followed.

In view of the above discussion, the writ petition is allowed in so far as petitioners No. 2 and 3, namely, Vijay Kumar and Tripti Chander Sharma, respectively, are concerned. They shall be permitted to appear in the supplementary examination of the B.Ed Course like Duni Chand. However, the writ petition with regard to petitioners other than petitioners No. 2 and 3, is concerned, the same is rejected since none of them has attended 40% lectures. We further direct the Registrar of the University to ensure that the directions given by us are brought to the notice of the concerned authorities i.e. Principals/Heads of Faculties/Chairman of the Department, Pro-vice Chancellor, Vice Chancellor etc., as well as to the Students Association so that it is known to all concerned that in future, condonation of lectures shall be ordered strictly in accordance with the ordinances and not otherwise.

(Deepak Gupta), J.

September 10, 2007 (V.K.Ahuja), J.

s.